Acquiring Services Using Multiple Award Contracts Under Section 803

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Overview

- Purpose
- Driving Issue
- Acronyms
- Background Information
- Section 803 Procedures

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Purpose

To explain the ACFEE procedures used to implement the changes required for *award of task orders for services* in *excess of $100,000* as a result of Section 803 of Public Law 107-107

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Driving Issue

Congress believes that the Department of Defense is not following Congressional intent with respect to competition in the awarding of task orders for services using multiple award instruments

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Acronyms

- **ID/IQ – Indefinite Delivery/Indefinite Quantity Types of contracts AFCEE uses – e.g ENRAC, EMCOS, PSC, GEITA**
- **FASA – Federal Acquisition Streamlining Act (1994)**

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Background
A History Since FASA

- **FASA permits the award of task orders using multiple award instruments (contracts)**
- **Law requires all multiple award contractors be given a *fair opportunity* to compete for task orders**
- **FASA provides four specific exceptions to *fair opportunity***

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FASA Fair Opportunity Exceptions

- **Agency need is so urgent that providing an opportunity would result in *unacceptable delays* [FAR 16.505(b)(2)]**
- **Only *one awardee is capable* of providing the services required at the level of quality required because the services ordered are *unique or highly specialized* [FAR 16.505(b)(2)]**

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FASA Fair Opportunity Exceptions

- **Order must be issued on a sole-source basis in the interest of economy and efficiency as a *logical follow-on* to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order [FAR 16.505(b)(2)]**

- **Necessary to place an order to *satisfy a minimum guarantee*. [FAR 16.505(b)(2)]**

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Section 803

Section 803 of P.L. 107-107 requires DoD to issue DFARS policy requiring competition (at the task order level) in the purchase of services under multiple award contracts. DoD has done so and the policy is now in place.

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Section 803

Section 803 APPLIES to FAR Part 16 *services* work > $100,000 under certain AFCEE ID/IQ contracts for *services* and to FAR Part 8 *services* under FSS contracts (GSA).

Section 803 APPLIES to all such buys for DoD, no matter who spends the money.

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Section 803

Section 803 DOES NOT apply to FAR Part 36 Architect-Engineering (A & E) or Construction services (most of the work under ENRAC).

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Section 803

A&E is an excluded service under DFARS 216.505-70

Construction is purchased using FAR Part 36 not FAR Part 37 – Service Contracting

Section 803 Procedures ID/IQ Services Orders > $100,000

When the *services* work falls under a covered ID/IQ contract (e.g. GEITA, PSC), and is >$100,000 –

- **All contractors must be given *fair notice* of the work and a *fair opportunity* to compete for the task order award.**
- **All contractors must be provided a copy of the description of work, the basis upon which the PCO will make the selection, and given the opportunity to submit a proposal.**
- **The PCO must consider all proposals submitted.**
- **The only exceptions are those specified under FASA and any statute authorizing or**

Section 803 Procedures ID/IQ Services Orders > $100,000

GEITA Contracts

- **All work accomplished under the GEITA contracts is defined as covered services work – advisory and assistance services. Section 803 applies for GEITA efforts >$100,000. For GEITA task orders, you should follow the procedures outlined by the GEITA PM. GEITA services are contracted for through HSW/PKVA.**

ENRAC Contracts

- **Work accomplished under the ENRAC is, for the most part, considered construction and Section 803 does not apply. Decisions on the nature of the work and what process should be followed must be made. Contracting personnel can assist**

Section 803 Procedures ID/IQ Services Orders > $100,000

ENRAC Contracts (continued)

- **STEP 1 – COR completes Section 803 BETA checklist – a decision tool to help make the call on whether the work involves A & E work, construction work, or services work covered under Section 803.**

- **STEP 2 – If the work is construction – Section 803 does not apply; if the work is A & E – Section 803 does not apply and you should use the A & E contracts; if the work is services > $100,000 – Section 803 applies; GO TO Step 3.**

Section 803 Procedures ID/IQ Services Orders > $100,000

ENRAC Contracts (continued)

- **STEP 3 – Decide if a FASA exemption applies. If one does, you do not need to compete. If one doesn't, GO TO STEP 4.**

- **STEP 4 – Provide *fair notice* to all ENRAC contractors on the AFCEE web site (see Jill Mayo). Fair Notice includes a description of the work and the basis upon which the task order will be awarded (will match what is in the contract).**

Section 803 Procedures ID/IQ Services Orders > $100,000

ENRAC Contracts (continued)

- **STEP 5 – COR/PCO evaluate offers submitted.**
- **STEP 6 – COR/PCO document the selection decision.**

If the work is for services work < $100,000 or is construction work, which should be the case the majority of the time, use the same *fair opportunity* process you use now. Don't forget the BETA checklist.

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Summary

Section 803 *addresses task orders over $100,000 for services*

Policy has changed

Emphasis is on *increasing competition*

When in doubt – provide all qualified contractors the opportunity to be considered for award